

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII**

In The Matter Of The Application Of

HAWAIIAN ELECTRIC COMPANY, INC.

DOCKET NO. 04-0113

**For Approval of Rate Increases and Revised Rate
Schedules and Rules, and for Approval and/or
Modification of Demand-Side and Load
Management Programs and Recovery of Program
Costs and DSM Utility Incentives**

**MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE OF
LIFE OF THE LAND**

AND

CERTIFICATE OF SERVICE

PUBLIC UTILITIES
COMMISSION

2005 FEB -2 P 3:33

FILED

**GOODSILL ANDERSON QUINN & STIFEL
THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA
1800 Alii Place
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone: 547-5600**

**Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.**

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Application Of

HAWAIIAN ELECTRIC COMPANY, INC.

For Approval of Rate Increases and Revised Rate
Schedules and Rules, and for Approval and/or
Modification of Demand-Side and Load Management
Programs and Recovery of Program Costs and DSM
Utility Incentives

DOCKET NO. 04-0113

**MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE OF
LIFE OF THE LAND**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") in opposition to the Motion to Intervene of Life of the Land ("LOL"), dated January 24, 2005 ("LOL's Motion").

HECO opposes LOL's motion to intervene as a party on the grounds that (1) any general interest that LOL may have with respect to HECO's proposed rate increase can be adequately represented by the Consumer Advocate; (2) LOL has not demonstrated that its participation as a party would contribute to the development of a sound record regarding the reasonableness of HECO's proposed rate increase; (3) LOL's participation as a party could unduly delay the proceedings and unreasonably broaden the issues presented in this docket; and (4) LOL has not shown that it should be granted full-party status in this proceeding, given its limited focus in the primary issues in a general rate increase proceeding (i.e., the revenue requirements issues).

LOL's focus is directed at HECO's proposed energy efficiency demand-side management ("DSM") programs and the alleged "environmental implications" associated with

the DSM programs. If LOL is allowed to participate in this docket with respect to HECO's proposed DSM programs, then LOL should be designated a participant, and not an intervenor party, and its participation should be limited to the issue of HECO's proposed DSM programs. In addition, LOL's participation should not be permitted to affect the schedule of proceedings or the statement of the general rate case issues, and LOL should be required to comply with the Commission's Rules of Practice and Procedure.¹

If LOL (or any other person) is granted participant status with respect to HECO's proposed energy-efficiency DSM programs, and the regulatory treatment of DSM programs proposed by HECO, then the parties (HECO and the Consumer Advocate) and any participants, and/or the Commission should establish a separate schedule (with separate hearing date, if necessary) for such issue.

I. DISCUSSION

A. LOL Does Not Have A Statutory Right To Participate In This Docket

With respect to the nature of its right to participate in the instant proceeding, LOL's Motion cites a provision of the Hawaii Constitution. LOL's Motion at 2.² However, this provision does not grant LOL the status of a party to a Commission proceeding. Compare Hawaii Revised Statutes ("H.R.S.") §269-51 (granting the Consumer Advocate the right to participate in Commission proceedings). Thus, LOL's Motion to intervene is governed by the Commission's Rules of Practice and Procedure regarding intervention. The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission "is not a matter of right but is a matter resting within the

¹ Title 6, Chapter 61 of the Hawaii Administrative rules ("H.A.R.") is referred to as the "Commission's Rules of Practice and Procedure".

sound discretion of the Commission.” In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. H.A.R. §6-61-55(d) specifically states that: “Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.” Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993).

In addition, the Commission needs to insure “the just, speedy and inexpensive determination of every proceeding,” which is the purpose of the Commission’s Rules of Practice and Procedure as stated in H.A.R. §6-61-1. However, the “just, speedy and inexpensive determination” of a proceeding cannot be accomplished if the Commission admits every movant as a party. Based on the standards set forth above, LOL’s motion to intervene as a party should be denied.

B. LOL’s Interest With Respect To HECO’s General Rate Increase Request Can Be Adequately Represented By The Consumer Advocate

H.A.R. §6-61-55(b)(5) requires LOL to establish “the extent to which the applicant’s interest will not be represented by the existing parties.” H.A.R. §6-61-55(b)(8) requires LOL to establish “the extent to which applicant’s interest in the proceeding differs from that of the general public.”

LOL broadly alleges that it and some of its members are “HECO ratepayers” and

² LOL’s Motion does not contain page numbers. Therefore, reference will be made to the first page of substantive text contained in LOL’s Motion as page 1, and other page designations will follow sequentially.

Hawaiian Electric Industries stockholders, and that LOL and its members will be impacted by the rate increase in this docket. LOL's Motion at 5. LOL's interest in general rate case issues (revenues, expenses, rate base, rate of return, cost of service and rate design) is generally the same as that of the general public. Therefore, LOL's interest in general rate case issues can be adequately represented by the Consumer Advocate. The Consumer Advocate is required under the Hawaii Revised Statutes to "represent, protect, and advance the interest of all consumers." H.R.S. §269-51 (emphasis added).

C. LOL Has Not Shown That Its Participation Would Assist The Development Of A Sound Record Regarding The Reasonableness Of HECO's Proposed Rate Increase

LOL alleges that its participation "will assist in the development of a sound record." LOL's Motion at 6. LOL also alleges that its "familiarity with key documents and issues will help us to educate the PUC staff and Commissioners. . . . Our expert witnesses will include Henry Curtis." LOL's Motion at 6.

However, LOL does not demonstrate how its participation would assist in the development of a sound record regarding HECO's revenues, expenses, rate base and rate of return, and reasonableness of the proposed rate increase or provided any evidence of expertise in general rate case issues. In addition, there is no indication that LOL has additional resources or expertise with respect to the general rate case issues necessary to this proceeding that are not available to the Consumer Advocate.

Further, LOL has not provided any evidence that it has experience in utility rate case proceedings. LOL has not demonstrated that its experience in other proceedings will provide expertise in addressing the relevant issues of this case regarding HECO's revenues, expenses, rate base, rate of return, and reasonableness of its proposed rate increase.

D. LOL's Participation Could Unduly Delay The Proceedings And Unreasonably Broaden The Issues

LOL alleges that its participation will not broaden the issues beyond those introduced by HECO, nor will it unduly delay the proceedings. LOL's Motion at 6. However, LOL could unduly delay the proceedings and unreasonably broaden the issues by raising issues not pertinent to this docket and more appropriately addressed in other proceedings. For example, LOL stated that "[t]he issues raised in this docket also affect other dockets that Life of the Land is involved in, including, but not limited to, Distributed Generation (PUC No. 03-0371), and the East Oahu Transmission Project (PUC No. 03-0417), dockets that we have requested to be in such as HECO's Integrated Resource Planning ("IRP") docket, and other energy actions we are involved in." LOL's Motion at 4.³ In addition, LOL's stated interests in "environmental impacts, and total costs including externalities" (LOL's Motion at 6) are more appropriately addressed in HECO's current IRP process (in which LOL is participating as a member of HECO's IRP-3 Advisory Group and all of the related Technical Committees), and in the subsequent proceeding to review the preferred integrated resource plan selected by HECO as a result of the IRP process (to which LOL has prematurely moved to intervene, because HECO has not yet filed its 3rd IRP Plan for Commission approval⁴).

LOL also has not identified any evidence that it would propose to offer regarding the

³ LOL's rationale could also result in the Commission being unable to insure the "just, speedy and inexpensive determination of every proceeding". For example, under LOL's rationale, parties and participants in the generic distributed generation proceeding (Docket No. 03-0371) should be permitted to intervene in this proceeding (if they moved to intervene) because issues raised in this docket also affect the distributed generation docket. This could result in unduly delaying and unreasonably broadening the issues in this docket as there are numerous parties and participants in the generic distributed generation proceeding.

⁴ See Docket No. 03-0253, HECO's Memorandum in Opposition to Life of the Land's Motion to Intervene, filed October 11, 2004.

reasonableness of HECO's proposed rate increase. As a result, it is difficult for the Commission to determine the merit of LOL's claim that its participation would not broaden the issues or unduly delay the proceedings.

Moreover, persons allowed to intervene by the Commission in ratemaking proceedings pursuant to H.A.R. §6-61-55 generally are afforded full-party status with respect to all issues raised in the proceedings. A strong showing should be required before a person is permitted to intervene as a full party. LOL has not justified being permitted to intervene as a full party in this docket.

E. If The Commission Finds That LOL Should Be Allowed To Participate, Then It May Be Appropriate To Allow LOL Limited Participation

The Commission in the past has denied intervenor status, but granted participation status pursuant to H.A.R. §6-61-56, and allowed the limited participation of persons seeking intervention on specific issues, when such persons' interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

H.A.R. §6-61-56(a) provides that:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

For example, in Re Hawaii Electric Light Co., Docket No. 99-0207, Order No. 17532 (February 10, 2000) ("Order No. 17532"), the Commission denied the attempt of Citizen Utilities Company dba The Gas Company ("TGC") to intervene in Hawaii Electric Light Company, Inc.'s ("HELCO") rate case. However, the Commission granted TGC participant status, limited to

HELCO's proposed Standby Rider A. The Commission stated:

the commission believes that TGC's limited input as to the effects of Rider A on self-generators that use gas as a fuel source may prove useful. Therefore, consistent with HAR §6-61-56(a), the commission will grant TGC participant status, limited to this narrow issue;⁷ provided that TGC's participation does not in any manner duplicate the efforts of the Consumer Advocate in this regard. If, at any time during the commissions review, it is concluded that TGC's efforts duplicate those of the Consumer Advocate's, the commission will reconsider TGC's further participation in this docket.

Order No. 17532 at 5-6 (footnote 6 omitted).

In addition, in Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) ("Order No. 10399"), the Commission denied the amended application to intervene of Puna Community Council, Inc. ("PCC") in a HELCO rate case, but granted PCC participation status, subject to the conditions that (1) PCC's participation would be "limited to the issue of the specific impact of HELCO's proposed rate structure on the ratepayers of the Puna district who are in the lower income brackets", and (2) "PCC shall participate in the proceedings and present relevant documents and materials and testimony of witnesses through the Consumer Advocate." Order No. 10399 at 5-6. (PCC had sought to intervene on the basis that HELCO's proposal to increase its rates would seriously impact the ratepayers of the Puna district. PCC's only attempt to distinguish itself from the general public was the allegation that HELCO's proposed rate increase would seriously impact Puna ratepayers because most of them were in the lower income brackets and tend to use less power. PCC also argued that the

⁷ Footnote 7 to Order No. 17523 reads as follows: "Unless ordered otherwise, TGC's participation will extend no further. We also make clear that as part of its on-going review of HELCO's request for a general rate increase, the commission, on its own motion or otherwise, may later decide to separate Rider A from this rate proceeding. If so, TGC's participation in this rate proceeding will terminate. Finally, we note that in two dockets currently pending before the commission, Hawaiian

Consumer Advocate would not adequately represent the interests of the Puna district ratepayers.)

Further, in Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) (“D&O 11668”), the Commission denied intervention, but allowed limited participation to seven low-income residents through its attorneys, the Legal Aid Society of Hawaii (collectively “Legal Aid”), in a Maui Electric Company, Limited (“MECO”) rate case. The low-income residents, through Legal Aid, sought to intervene on the alleged basis that they would not be adequately represented by the Consumer Advocate. D&O 11668 at 3. In addition, Legal Aid informed the Commission that it could further the development of the record as it had access to certain experts and resources not available to any other party. The Consumer Advocate supported Legal Aid’s involvement in the proceeding. The Commission denied Legal Aid’s Motion to Intervene, and found that the Consumer Advocate would protect Legal Aid’s interest. However, the Commission was impressed by Legal Aid’s statement of expertise, knowledge and experience, and thus granted Legal Aid participation status limited to the issue of the specific impact of MECO’s proposed rate structure and rate design on ratepayers in the lower income brackets.

LOL has not requested participation status. However, if the Commission finds that LOL should be allowed to participate in this proceeding and that the Consumer Advocate would not adequately represent LOL’s interest involving HECO’s proposed DSM programs, then LOL’s participation should be limited to HECO’s proposed DSM programs.

Moreover, if LOL (or any other person) is granted participant status with respect to HECO’s proposed energy-efficiency DSM programs, and the regulatory treatment of DSM programs proposed by HECO, then the parties (HECO and the Consumer Advocate) and any

Electric Company, Inc., seeks to implement a standby charge on an interim (Docket No. 99-0105) and permanent basis (Docket No. 96-0356).”

participants, and/or the Commission should establish a separate schedule (with a separate hearing date, if necessary) for such issue. This was done with respect to an avoided cost issue raised in the rate case for HELCO using a 1990 test year in Docket No. 6432, and with respect to the standby charge issue raised in HELCO's 2000 test year rate case in Docket No. 99-0207.

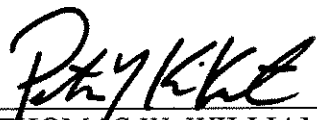
HECO's proposed energy-efficiency DSM programs, and the regulatory treatment of its DSM programs, are being proposed in HECO's rate case because of Commission-approved stipulations allowing the continuation of HECO's existing DSM programs. See Order No. 19019, issued November 15, 2001, in Docket No. 00-0169, and Order No. 19020, issued November 15, 2001, in Docket No. 00-0209. DSM programs, and related mechanisms for the recovery of program costs, utility incentives and lost margins, generally are addressed in proceedings separate and apart from rate cases.

II. CONCLUSION

Based on the foregoing, HECO respectfully requests that the Commission deny LOL's motion to intervene as a party. If LOL is allowed to participate in this docket, however, then LOL should be designated a participant, and not an intervenor party, and its participation should be limited to HECO's proposed DSM programs. Moreover, LOL's participation should not be permitted to affect the schedule of proceedings or the statement of the issues, and LOL should be required to comply with the Commission's Rules of Practice and Procedure. If LOL (or any other person) is granted participant status with respect to HECO's proposed energy-efficiency DSM programs, and the regulatory treatment of DSM programs proposed by HECO, then the

parties (HECO and the Consumer Advocate) and any participants, and/or the Commission should establish a separate schedule (with separate hearing date, if necessary) for such issue.

DATED: Honolulu, Hawaii, February 2, 2005.

A handwritten signature in black ink, appearing to read 'Pete Williams' and 'Peter Y. Kikuta', written over a horizontal line.

THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing
**MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE OF LIFE OF THE
LAND**, together with this Certificate of Service, by hand delivery and/or by mailing a copy by
United States mail, postage prepaid, to the following

Division of Consumer Advocacy (2)
Department of Commerce and Consumer Affairs
335 Merchant Street, Room 326
Honolulu, Hawaii 96813

Henry Q Curtis
Vice President for Consumer Issues
Life of the Land
76 North King Street, Suite 703
Honolulu, Hawaii 96817

DATED: Honolulu, Hawaii, February 2, 2005



THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.